

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**STONEGATE LAND COMPANY, L.C.
STONEGATE LAND CO., L.C.
NPDES General Permit No. 2
Authorization No. 10687-10484**

**ADMINISTRATIVE
CONSENT ORDER
NO. 2008-WW- 12**

**TO: John C. Kline, President
Stonegate Land Company, L.C.
2171 Grand Avenue
West Des Moines, IA 50265**

**Stephen R. Grubb, Registered Agent and Owner/Developer
Stonegate Land Co., L.C.
475 S 50TH St STE 100
West Des Moines, IA 50265**

I. SUMMARY

This administrative consent order (order) is entered into between Stonegate Land Company, L.C. and Stonegate Land Co., L.C. (Stonegate) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order for the purpose of resolving storm water violations by Stonegate Plat 2 in Clive, Iowa. Stonegate agrees to pay an administrative penalty of \$8,000.00. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions or responses regarding this order shall be directed to:

Relating to technical requirements:

Bill Gross, Environmental Specialist Senior
IDNR Field Office #5
607 East 2nd Street
Des Moines, Iowa, 50309-1831
Ph: 515/281-9069

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building, 502 E. 9th
Des Moines, Iowa, 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building, 502 E. 9th
Des Moines, Iowa, 50319-0034

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
STONEGATE LAND COMPANY, L.C.**

II. JURISDICTION

The parties agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10(455B), which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Stonegate Plat 2 is located in the SW ¼ of Section 25, T 79N, R26 W in Dallas County, Iowa. Stonegate Plat 2 is a townhomes project situated east of NW 156th St. along Boston Parkway in Clive, Iowa. The site is at the northeast corner of the intersection and has been completely denuded of vegetation. Runoff flows to the northeast corner of the townhomes site (2-5% slope).

2. John C. Kline, president of Stonegate, was granted authorization under NPDES General Permit No. 2. Authorization under General Permit No. 2 requires the permit holder to have a pollution prevention plan (PPP) for the specific land disturbing activities. The PPP for construction activities is to be implemented so as to minimize pollution from precipitation or snowmelt runoff through or over the disturbed land. Typically, measures include soil stabilization measures such as temporary or permanent seeding, planting, mulching or other stabilization measures, and structural controls such as dikes, silt fences, sediment traps or basins. Routine inspections and record keeping are required. The PPP for this construction activity was not followed. Adequate storm water control devices were not installed and maintained during ground-disturbing activities.

3. Qualified personnel must inspect disturbed areas and erosion and sediment control measures at least once every seven calendar days and within 24 hours of the end of a storm that produces 0.5 inches or more precipitation. Reports summarizing the inspections must be made and maintained as part of the plan. Part V of the permit requires that a copy of the plan and reports be retained at the construction site or alternative site approved by the Department. Part VI, E, requires the permittee to furnish any information requested by the Department to determine compliance or to furnish any records required to be kept by the permit within a reasonable time.

4. On September 16, 1998, the Department issued Administrative Order 98-WW-21 (1998 order) to John Kline and The Legacy Group, L.C., requiring compliance with PPP, stabilization of construction sites, maintenance of inspection logs, and completion of repairs and inspections. The order assessed an administrative penalty of \$10,000.00.

5. On May 3, 2006, Bill Gross of Field Office No. 5 (FO5) discovered water overtopping a sediment basin and flowing into a Walnut Creek tributary at the northwest

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
STONEGATE LAND COMPANY, L.C.**

corner of Stonegate Plat 2 behind 15430 Clearview Lane, Urbandale, Iowa. The flow had created a sediment fan at the confluence and had clouded the water. Mr. Gross collected samples and sent them to the University of Iowa Hygienic Laboratory (UHL) for Total Suspended Solids (TSS) analysis. Mr. Gross instructed a McAninch employee, Ryan Dooley, to halt the discharge. Mr. Dooley responded that he was attempting to dry out the site for development purposes. The PPP for Plat 2 was not available on site and the inspection log had no entries.

6. On May 4, 2006, Mr. Gross phoned Bruce Gates at Stonegate requesting a copy of the PPP and inspection log. Mr. Gross also informed Mr. Gates that the sediment basin needed an overflow riser and that at least a Notice of Violation (NOV) was pending. Mr. Gates reported that he would contact Stormwater Consultants to obtain the requested documents.

7. On May 5, 2006, Mr. Gross revisited the site and found no discharge. Mr. Gross also found about three feet of freeboard in the sediment basin. When Mr. Gross contacted Stormwater Consultants and obtained the PPP and inspection log, he found that there was no PPP for Plat 2 and no entries on the inspection log. Mr. Gross left Mr. Gates a message requesting a PPP. The requested PPP was not received prior to the issuance of the NOV letter.

8. On May 10, 2006, the Department sent a Notice of General Permit Coverage under General Permit No. 2 for stormwater discharge associated with construction activity relating to Stonegate.

9. On May 12, 2006, Mr. Gross received the lab results for the samples taken May 3, 2006. TSS concentrations were 310 mg/L for the point of discharge to Walnut Creek sample, 110 mg/L for the downstream sample, and 16 mg/L for the upstream sample. These results indicated that the TSS concentration at the point of discharge to Walnut Creek was significantly higher than the TSS concentration in the upstream sample.

10. On May 15, 2006, the Department sent a NOV letter by certified mail to Stonegate for stormwater violations. The NOV letter instructed Stonegate to submit a PPP, an inspection log, and plans for improvement by June 5, 2006. The letter stated that the matter was being referred to the Legal Services Bureau.

11. On May 26, 2006, Mr. Gross met on-site with Stormwater Consultants' employee, Carla Morre. Ms. Morre showed the inspection log to Mr. Gross, who found that it contained entries for May 9, May 15, and May 22, 2006. The townhomes site is located on Outlot C and D, but Outlot D was not included in the PPP. At the north end of the site, a series of stormwater inlets were connected to an underground storm sewer. Mr. Gross found that the inlets still needed protection from the inflow of sediment and that the former sediment basin was designed to be a detention basin for stormwater in an overcharged sewer. Mr. Gross spoke with an employee from the engineering firm EDS,

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
STONEGATE LAND COMPANY, L.C.**

Mark Wellner, and requested a revised PPP that included the north drainage system and Outlot D.

12. On June 1, 2006, FO 5 received the revised PPP.

IV. CONCLUSIONS OF LAW

The parties agree to the following conclusions of law:

1. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Environmental Protection Commission has adopted federal regulations pertaining to the issuance of National Pollutant Discharge Elimination System (NPDES) permits for storm water discharge at 567 IAC 60.2 (455B) and 567 IAC chapter 64. Pursuant to rule 60.2 (455B), "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. Number 10 under this definition includes "construction activity" including clearing, grading, and excavation activities. Excluded are operations that result in the disturbance of less than one acre of total land area that are not part of a larger common plan of development or sale.

2. Subrule 64.4(2) provides that the Director may issue general permits that are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(2) adopts Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No.2. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b", the applicant is authorized to discharge, unless notified by the Department to the contrary. Subrule 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director.

3. General Permit No.2, Part IV, provides that the permittee must develop and implement a "pollution prevention plan" (PPP) in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the plan. Disturbed areas must be stabilized within 14 days if no construction activity will take place within 21 days.

Plans must be updated to address changes in a facility's design and operation, and must be modified to address deficiencies noted by the Department. A copy of the plan is required to be kept on site and to be furnished to the Department upon request. Part V of the permit requires that a copy of the plan and reports be retained at the construction site or alternative site approved by the Department. Part VI, E, requires the permittee to

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
STONEGATE LAND COMPANY, L.C.**

furnish any information requested by the Department to determine compliance or to furnish any records required to be kept within a reasonable time.

4. Qualified personnel must inspect disturbed areas and erosion and sediment control measures at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. Reports summarizing the inspections must be made and maintained as part of the plan.

5. Department subrule IAC 61.3(2) requires that all surface waters be free from floating debris, substances that will settle to form sludge deposits, and discharges of materials that produce objectionable conditions. The discharge of water and materials from the site and from the overflow of an undersized sediment basin deposited sediment in a Walnut Creek tributary, which greatly increased the TSS in the stream and clouded the water. The foregoing facts indicate this provision has been violated.

6. The stormwater runoff controls at Stonegate were insufficient. The contractor had to open part of a sediment basin dam to drain it, as there was no discharge tube or other means of discharge. The sediment basin overflowed as a result and deposited sediment into a Walnut Creek tributary, causing water quality violations. The failure to implement adequate structural practices at the site under the PPP established violations of General Permit No. 2.

V. ORDER

THEREFORE, the Department hereby orders and Stonegate consents to do the following:

1. Pay a penalty of \$8,000.00. The penalty shall be paid to the Department within 30 days after the Director signs this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for the violations involved in this matter and authorizes referral to the Attorney General for enforcement at the Director's request. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 for violations that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of an immediate administrative penalty of \$8,000.00.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
STONEGATE LAND COMPANY, L.C.**

a. **Economic Benefit-** The failure of the responsible party to install proper runoff controls and to handle runoff water properly saved Stonegate several thousand dollars. It is estimated that at least \$2,000.00 in time, operational costs, and proper equipment was saved in 2006. Therefore, \$2,000.00 is assessed for this factor.

b. **Gravity of the Violation-** Stonegate's failure to properly manage stormwater runoff from construction sites degrades surface water quality and deposits excess sediment in water channels, as was determined in this instance. Sedimentation of Iowa's waterways is a serious problem, and regulatory agencies have recognized that uncontrolled runoff is a significant contributor to these problems. Degraded water quality harms aquatic life, prevents the attainment of state water quality goals, and causes a decline in the quality of life generally. Therefore \$3,000.00 is assessed for this factor, due to multiple violations.

c. **Culpability-** John Kline, The Legacy Group, L.C., was issued an administrative order in 1998 for improper stormwater runoff controls at another development site. He was informed of the regulations and need to protect the quality of receiving waters pursuant to the 1998 order. The NPDES permit holder always has the obligation to be aware of the requirements the permit sets forth. Therefore, \$3,000.00 is assessed for this factor.

d. **Summary-** A total penalty of \$8,000.00 is assessed for the failure to maintain stormwater runoff controls and water quality criteria in the proper manner required by the Iowa Administrative Code and the NPDES General Permit No. 2 and for the history of violations of the same nature.


VII. APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This order is entered into knowingly by and with the consent of Stonegate. By signature to this order, all rights to appeal this order are waived by all parties.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
STONEGATE LAND COMPANY, L.C.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.


STEPHEN E. GRUBB, Owner/Developer
STONEGATE LAND CO., L.C.

Dated this 21 day of
April, 2008


Richard A. Leopold, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 25 day of
April, 2008

Stonegate Land Company, L.C., Stonegate Land Co., L.C., NPDES General Permit No.2
Authorization No.10687-10484 , Field Office No. 5- Bill Gross, Legal Services - Carrie
Schoenebaum, U.S. EPA, I.C.7.b.